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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,141	10/20/2000	James J. Fitzgibbon	70102	2344

22242 7590 11/27/2001

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 606033406

EXAMINER

RO, BENTSU

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 11/27/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/693,141		FITZGIBBON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Bentsu Ro		2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## FINAL REJECTION

1. In the first office action, paragraph 1, the examiner has stated that *"This application contains 97 pages of appendix. If the appendix is desirable to be printed in the issued patent, a clear and legible copy should be provided."* This statement is in error, and therefore, the examiner hereby withdraw this statement and substitutes with a new statement shown in the next paragraph 2.

2. Any computer program listing having over 300 lines must be submitted on a compact disc in compliance with 37 CFR §1.52(e).

A compact disc containing such a computer program listing is to be referred to as a "computer program listing appendix". The computer program listing appendix will not be part of the printed patent.

The specification must include a reference to the "computer program listing appendix" at the location indicated in 37 CFR §1.77(b)(4).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 32-40 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yoshida et al US Patent No. 4,775,823. (This is a new reference cited by applicant in the recently submitted IDS on 9/20/2001, paper #5.)

Claims read onto Yoshida et al teaching as follows.

### The claims:

Claim 32 (and also the broader method claim 37):

A motor control for a movable barrier operator, comprising:

a circuit for providing a pulse signal comprising a series of pulses;

### Yoshida et al teaching:

Fig. 1 shows an automatic door system for moving a door 5;

Fig. 1 shows a door motion detecting circuit 10 for providing clock pulses  $P_1$ ;

a motor control circuit responsive to the pulse signal,

for starting the motor and for determining the direction of rotation of the motor output shaft;

a detector coupled to the motor control circuit for detecting a predetermined characteristic relating to movement of a movable barrier; and

a controller for controlling the pulses in the pulse signal in accordance with the detected characteristic,

in accordance with the detected characteristic, a speed of the motor is linearly varies from an initial speed to an adjusted speed.

Claims 33 and 38. A motor control according to claim 32, wherein the detected predetermined characteristic relating to movement of the movable barrier comprises

the control unit 6 or the main control circuit 9;

Fig. 1 inside control unit, the door motion detecting unit issues an opening signal R, a closing signal L;

column 2, lines 67 through column 3, line 1, it clearly states that "the door-motion detecting circuit 10 comprises a detector and a direction-identifying circuit", therefore, "a predetermined characteristic relating to movement of a movable barrier" can be a direction of traveling;

Fig. 2 shows a counter circuit 12, the counter 12 issues a door position signal (see column 3, lines 11-12), therefore, the counter 12 can also be read as a detector, and the distance traveled is a predetermined characteristic relating to movement of the door 5;

Fig. 2 shows various circuits and gates, for example, first circuit 20, second circuit 22, setting unit 13, and gates 15, etc etc, all together constitute a controller; this controller controls the traveling distance and issues various signals to the speed control circuit 8;

Fig. 3 clearly shows a linear acceleration, a linear constant speed and a linear deceleration of the motor speed.

one of a position of the movable barrier operator,

a mode of operation of the movable barrier operator,

a length of travel of the movable barrier,

a type of movable barrier,

and a hazardous condition associated with movement of the movable barrier.

Claim 34. A motor control according to claim 33 wherein the hazardous condition comprises a barrier obstruction.

Claim 36 (and claim 40). A motor control according to claim 32 wherein the detected predetermined characteristic relating to movement of the movable barrier comprises feedback associated with movement of the movable barrier.

Fig. 3 shows all speed changing points;

opening mode with opening signal R or close mode with closing signal L;

the speed changing points correspond to the distance of travel;

an automatic door,

column 4, line 15 and thereafter teaches an accidental condition.

(Examiner's note: there is only one requirement for the detected predetermined characteristic even though the examiner has listed five of them.)

see column 4, line 15 and thereafter.

the door motion detecting circuit 10 and/or the detector (see column 2, line 68) and/or the counting circuit 12 (Fig. 2) provide feedback signals;

Figs. 6 and 9 show various diamond decision making blocks, these decision making blocks are feedback associated with movement of the door.

Regarding claims 35 and 39, it is noted that claims 35 and 39 depend on claims 33 and 38, respectively. Claims 33 and 38 define a single choice out of the five alternatives, they are:

- position of the barrier;
- mode of operation;
- length of travel;
- type of barrier;
- hazardous condition.

If the single choice is not the type of barrier, then claims 35 and 39 do not set forth any further mandatory limitation to the previous claims. In other words, claims 35 and 39 are part of claims 33 and 38 under certain choice condition, if that specific condition is not chosen, then claims 35 and 39 do not set forth that limitation to the previous claims.

Yoshida et al at least teach the position of the barrier, mode of operation, length of travel, and hazardous condition.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication should be directed to Bentsu Ro at telephone number (703) 308-3656.

November 10, 2001

Bentsu Ro  
**BENTSU RO**  
**PRIMARY EXAMINER**